

AMENDATORY SECTION (Amending Order 04-06, filed 3/18/05, effective 4/18/05)

WAC 173-322-020 Definitions. Unless otherwise defined in this chapter, words and phrases used in this chapter shall be defined according to WAC 173-340-200.

"Abandoned or derelict vessels" means vessels that have little or no value and either have no identified owner or have an identified owner lacking financial resources to clean up and dispose of the vessel.

"Area-wide ground water contamination" means multiple adjacent properties with different ownership affected by hazardous substances from multiple sources that have resulted in commingled plumes of contaminated ground water that are not practicable to address separately.

"Cleanup action" means any remedial action, except interim actions, taken at a site to eliminate, render less toxic, stabilize, contain, immobilize, isolate, treat, destroy, or remove a hazardous substance that complies with WAC 173-340-350 through 173-340-390.

"Coordinated water system plan" means a plan for public water systems within a critical water supply service area which identifies the present and future water system concerns and sets forth a means for meeting those concerns in the most efficient manner possible pursuant to chapter 246-293 WAC.

"Decree" or "consent decree" means a consent decree issued under WAC 173-340-520 or the federal cleanup law.

"Department" means the department of ecology.

"Director" means the director of the department of ecology.

"Economically disadvantaged county" means a county that meets the following criteria:

- The per capita income of the county, as measured by the latest official estimate of the Washington state office of financial management, is in the lower twenty counties in the state; and

- The county is economically distressed, as defined by chapter ((43.165)) 43.168 RCW.

The department will include a list of counties which are economically disadvantaged in the following publication: Washington state department of ecology, "*Remedial Action Program Guidelines*," Publication No. 99-505.

"Federal cleanup law" means the Comprehensive Environmental

Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 9601 et seq.

"Grant agreement" means a binding agreement between the local government and the department that authorizes the disbursement of funds to the local government to reimburse it for a portion of expenditures in support of a specified scope of services.

"Hazard ranking" means the ranking for hazardous waste sites used by the department pursuant to RCW 70.105D.030 (2) (b) and WAC 173-340-330.

"Hazardous substances" means any hazardous substance as defined in WAC 173-340-200.

"Hazardous waste site" means any facility where there has been confirmation of a release or threatened release of a hazardous substance that requires remedial action.

"Independent remedial actions" means remedial actions conducted without department oversight or approval and not under an order or consent decree.

"Initial containment of methamphetamine lab sites" means the first location where hazardous substances are confined by a container, vessel, barrier, or structure, whether natural or constructed, with a defined boundary, and that prevents or minimizes its release into the environment.

"Innovative technology" means new technologies that have been demonstrated to be technically feasible under certain site conditions, but have not been widely used under different site conditions. Innovative technology also means the innovative use of existing technologies that have been established for use under certain site conditions, but not the conditions that exist at the hazardous waste site for which a remedial action grant is sought. Innovative technology has limited performance and cost data available.

"Interim action" means a remedial action conducted under WAC 173-340-430.

"Loan agreement" means a binding agreement between the local government and the department that authorizes the disbursement of funds to the local government that must be repaid. The loan agreement includes terms such as interest rates and repayment schedule, scope of work, performance schedule, and project budget.

"Local government" means any political subdivision, regional governmental unit, district, municipal or public corporation, including cities, towns, and counties. The term encompasses but does not refer specifically to the departments within a city, town, or county.

"Methamphetamine lab site assessment" means the actions taken by a local health department or district under WAC 246-205-520 through 246-205-560, including posting the property, inspecting the property, determining whether the property is contaminated, posting contaminated property, and notifying occupants, property owners, and other persons with an interest in the contaminated property.

"Model Toxics Control Act" or "act" means chapter 70.105D RCW, first passed by the voters in the November 1988 general election as

Initiative 97 and as since amended by the legislature.

"National Priorities List" or "NPL" means a list of hazardous waste sites at which the U.S. Environmental Protection Agency intends to proceed with enforcement or cleanup action.

"No further action (NFA) determination" means a written opinion issued by the department under WAC 173-340-515 (5)(b) that the independent remedial actions performed at a hazardous waste site meet the substantive requirements of chapter 173-340 WAC and that no further remedial action is required at the hazardous waste site. The opinion is advisory only and not binding on the department.

"Order" means an order issued under chapter 70.105D RCW, including enforcement orders issued under WAC 173-340-540 and agreed orders issued under WAC 173-340-530, or an order issued under the federal cleanup law, including unilateral administrative orders (UAO) and administrative orders on consent (AOC).

"Oversight costs" are remedial action costs of the department or the U.S. Environmental Protection Agency reasonably attributable to the administration of an order or decree for remedial action at a hazardous waste site.

"Oversight remedial actions" means remedial actions conducted under an order or decree.

"Partial funding" means funding less than the maximum percentage of eligible costs allowed under this chapter.

"Pilot study" means an experiment in remedial action method, with the purpose of testing the suitability of a particular cleanup technology or process for remedial action at a particular site.

"Potentially liable person" or "PLP" means any person whom the department finds, based on credible evidence, to be liable under RCW 70.105D.040.

"Potentially responsible party" or "PRP" means "covered persons" as defined under section 9607 (a)(1) through (4) of the federal cleanup law (42 U.S.C. Sec. 9607(a)).

"Public water system" means any system, excluding a system serving only one single-family residence and a system with four or fewer connections all of which serve residences on the same farm, providing piped water for human consumption, including any collection, treatment, storage, or distribution facilities under control of the purveyor and used primarily in connection with the system and collection or pretreatment storage facilities not under control of the purveyor but primarily used in connection with such system.

"Purveyor" means an agency or subdivision of the state or a municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person or any other entity that owns or operates a public water system, or the authorized agent of such entities.

"Recycling" means a remedial action which permanently removes hazardous substances from the site and successfully directs the material into a new product suitable for further industrial or consumer use.

"Remedial action" means any action or expenditure consistent

with the purposes of chapter 70.105D RCW to identify, eliminate, or minimize any threat posed by hazardous substances to human health or the environment including any investigative and monitoring activities with respect to any release or threatened release of a hazardous substance and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

"Remedial design (RD)" means an engineering study during which technical plans and specifications are developed to guide subsequent cleanup action at a hazardous waste site.

"Remedial investigation/feasibility study" or "RI/FS" means a remedial action that consists of activities conducted under WAC 173-340-350 intended to collect, develop, and evaluate sufficient information regarding a site to enable the selection of a cleanup action under WAC 173-340-360 through 173-340-390.

"Retroactive costs" means costs incurred before the date of the grant agreement.

"Safe drinking water" means water meeting drinking water quality standards set by chapter 246-290 WAC.

"Safe drinking water action" means an action by a local government purveyor or other purveyor to provide safe drinking water through public water systems to areas contaminated by or threatened by contamination from hazardous waste sites.

"Site" means any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, or aircraft; or any site or area where a hazardous substance, other than a legal consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

"Site hazard assessment" means a remedial action that consists of an investigation performed under WAC 173-340-320.

"Treatment" means a remedial action which permanently destroys, detoxifies, or recycles hazardous substances.

[Statutory Authority: RCW 70.105D.070. 05-07-104 (Order 04-06), § 173-322-020, filed 3/18/05, effective 4/18/05. Statutory Authority: Chapter 70.105D RCW. 01-05-024 (Order 97-09A), § 173-322-020, filed 2/12/01, effective 3/15/01. Statutory Authority: RCW 43.21A.080. 93-24-047, § 173-322-020, filed 11/23/93, effective 12/24/93. Statutory Authority: Chapter 70.105D RCW. 90-10-057 (Order 89-45), § 173-322-020, filed 5/1/90, effective 6/1/90.]

AMENDATORY SECTION (Amending Order 04-06, filed 3/18/05, effective 4/18/05)

WAC 173-322-130 Loans. (1) **Purpose.** This section establishes requirements for a program of remedial action loans to local governments under RCW 70.105D.070 (3)(a) and (7). The loan program shall be limited to providing loans to supplement local government funding and funding from other sources to meet the match requirements for oversight remedial action grants. The intent of the loan program is to encourage and expedite the cleanup of hazardous waste sites and to lessen the impact of the cleanup cost on ratepayers and taxpayers.

(2) **Types of loans.** The loan program includes two different types of loans, a standard loan and an extraordinary financial hardship loan. The two types of loans have different applicant eligibility requirements and different terms and conditions for repayment based upon the applicant's ability to repay the loan.

(a) Standard loan. A standard loan is a loan that includes the terms and conditions for repayment.

(b) Extraordinary financial hardship loan. An extraordinary financial hardship loan is a loan that includes deferred terms and conditions for repayment. Deferred terms and conditions may not be indefinite. Any such loan must be approved by the director.

(3) **Applicant eligibility.** To be eligible for a loan, the applicant must meet the following requirements:

(a) The applicant must be a local government, as defined in WAC 173-322-020;

(b) The applicant must meet the eligibility requirements for an oversight remedial action grant set forth in WAC 173-322-070(2);

(c) The applicant must agree to undergo an independent third-party financial review to determine its financial need for the loan, ability to repay the loan, and inability to obtain funds from ~~((any))~~ other sources. The financial review shall be conducted at the direction and cost of the department ~~((; and))~~. Based on that financial review, the applicant must demonstrate the following:

(i) For a standard loan, its financial need for the loan, ability to repay the loan, and inability to obtain funds from any other source;

(ii) For an extraordinary financial hardship loan, its financial need for the loan, inability to repay the loan under present circumstances, inability to obtain funds from any other source, and inability to bond or raise its tax base;

(d) The hazardous waste site must present an immediate danger to human health and the environment; and

(e) The inability to obtain a loan would significantly delay the cleanup and subsequent use, sale or redevelopment of the properties affected by the hazardous waste site.

~~((3))~~ **(4) Application process.**

(a) **Submittal.** The loan application must be submitted to the department at the same time as the associated oversight remedial action grant application.

(b) **Content.** The loan application must be completed on forms provided by the department and include the following:

(i) Sufficient evidence to demonstrate the following:

(A) For a standard loan, the applicant's financial need for the loan, ability to repay the loan, and inability to obtain matching funds from any other source;

(B) For an extraordinary financial hardship loan, the applicant's financial need for the loan, inability to repay the loan under present circumstances, inability to obtain funds from any other source, and inability to bond or raise its tax base;

(ii) Sufficient evidence that the hazardous waste site presents an immediate danger to human health and the environment;
~~((and))~~

(iii) Sufficient evidence that the inability to obtain a loan would significantly delay the cleanup and subsequent use, sale or redevelopment of the properties affected by the hazardous waste site; and

(iv) A copy of the applicant's most recent Comprehensive Annual Financial Report.

~~((4))~~ **(5) Application evaluation and prioritization.**

(a) The department will evaluate the loan application together with the associated oversight remedial action grant application. The grant and loan applications will be evaluated by the department for completeness and adequacy. After the grant and loan applications have been completed, the department and the applicant will negotiate a scope of work and budget for the grant and loan. The department will consider cost eligibility and other sources of funding when negotiating the scope of work and budget for the grant and loan.

(b) If the department determines that the applicant meets eligibility requirements for an extraordinary financial hardship loan in subsection (3) of this section, then the department may, upon the approval by the director, provide such a loan to the applicant instead of a standard loan.

(c) The department will fund the loan from the same fund allocation used to fund the associated oversight remedial action grant. When the demand for funds allocated for oversight remedial action grants and loans exceeds the amount of funds available, the department will prioritize the associated grant and loan applications together using the criteria set forth in WAC 173-322-070(5).

~~((5))~~ **(6) Cost eligibility.** The eligible costs for the loan program shall be the same as the eligible costs for the oversight remedial action grant program set forth in WAC 173-322-070(6).

~~((6))~~ **(7) Retroactive cost eligibility.** The eligibility of retroactive costs for the loan program shall be the same as the eligibility of retroactive costs for the oversight remedial action grant program set forth in WAC 173-322-070(7).

((+7+)) **(8) Funding and repayment.**

(a) **General.** If the department provides the applicant an oversight remedial action grant and the grant is funded to the maximum extent allowed under WAC 173-322-070(8), then the department may also provide the applicant a loan to enable the applicant to meet the match requirement for the grant. The loan shall be used to supplement local government funding and funding from other sources to meet the match requirement.

(b) **Department funding of match requirement.** The department may provide a loan to the applicant for up to one hundred percent of the match requirement for the oversight remedial action grant.

(c) **Local government funding of match requirement.** The applicant shall fund those eligible costs not funded by the department under the grant or loan. The applicant may not use in-kind services or proceeds from contribution claims to meet the match requirement.

(d) **Repayment of loan.** The terms and conditions for repayment of the loan shall be based on the applicant's ability to repay the loan, as determined by an independent third-party financial review. The independent third-party financial review shall be conducted at the direction and cost of the department. For extraordinary financial hardship loans, the repayment terms and conditions can be deferred. Deferred terms are dependent on periodic review of the applicant's ability to pay. Deferred terms and conditions may not be indefinite.

[Statutory Authority: RCW 70.105D.070. 05-07-104 (Order 04-06), § 173-322-130, filed 3/18/05, effective 4/18/05.]